

IN THE MATTER OF a Board of Inquiry appointed pursuant to s. 38 (1)
of the Human Rights Code, R.S.O. 1900, c. H-19

B E T W E E N

DONNA KOSTANOWICZ

Complainant

and

BRANISLAW ZARUBIN

Respondent

Date of Complaint: May 5, 1991.

Hearing: Toronto, Oct. 1, Oct. 25, Nov. 17, Nov. 19, 1993.

Board of Inquiry: Lorne Slotnick

Appearances: Catherine Bickley, for Ontario Human Rights Commission
Grace Permaul, for Complainant
Frank Gardner, for Respondent

Donna Kostanowicz, who in 1991 was a single mother receiving welfare, alleges in this complaint that she was discriminated against by a landlord, Branislaw Zarubin, when she was looking for an apartment. Ms Kostanowicz says she was treated unequally because she was receiving welfare, contrary to Section 2(1) of the Human Rights Code, which provides that "Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of ... the receipt of public assistance."

At the start of the hearing, counsel for the Commission asked me to add Investors Choice Real Estate Ltd. as a respondent. I agreed to do so, as it appeared that this corporation managed the building that is the subject of the complaint. By the end of the hearing, however, there was no clear evidence linking Investors Choice to the building. The complaint against Investors Choice is dismissed.

Ms Kostanowicz and Mr. Zarubin have sharply differing versions of what happened when Ms Kostanowicz filled out an application for an apartment in a building owned by the Zarubin family, and much of the evidence at the hearing focussed on credibility.

Facts

In April, 1991, Ms Kořtanowicz had a 15-month-old son and was going to school while receiving provincial family benefits. She had been living in a one-bedroom apartment for nearly 10 years, but wanted more room because of her child, and began looking for a two-bedroom apartment. She had signed a lease for her current apartment that did not expire until September of that year.

Mr. Zarubin had placed a newspaper ad soliciting tenants for a 102-unit complex he owned with his wife and son in Etobicoke. Ms Kořtanowicz called the number in the ad (a number at the Zarubin home), and made arrangements with Zeena Zarubin, Mr. Zarubin's wife, to see a unit.

When Ms Kořtanowicz showed up at the apartment building with her child, she talked to Paul Plamenco, who works part-time for the Zarubins as a bookkeeper and who takes applications from prospective tenants.

Ms Kořtanowicz filled out an application, dated April 13, 1991, for a two-bedroom apartment. The application made numerous requests for information, including names and ages of proposed occupants, current address and landlord, bank account number, etc. Beside the space for occupation and salary, Ms Kořtanowicz wrote: "I'm on mother's allowance and I'm going to school. Receiving at

present \$950. If accepted into 2 bedroom I'll receive \$1,140.00."

Ms Kostanowicz left blank some sections of the application, including when the tenancy was to commence, and whether she was agreeing to pay electricity, gas, heat, etc. She says she made it clear she was looking for an apartment right away.

She says Mr. Plamenco did not ask for any more information, except her landlord's phone number, which she later phoned in. That phone number appears on the application in Mr. Plamenco's writing.

Ms Kostanowicz also says she was not shown an apartment, because Mr. Plamenco said he had not received notice in writing to show a unit.

About a week later, Ms Kostanowicz says, she called Mr. Plamenco, who she says told her that if she hadn't heard anything yet she should presume that she did not have the apartment. But as she continued to look for apartments, she noticed the same ad was still in the paper. She says she was upset by this and mentioned it to a friend, who speculated that she might have been denied the apartment because she was on welfare.

Ms Kostanowicz said she decided to find out why the ad was still in the paper. She phoned the number in the paper and reached Mr. Zarubin. She says Mr. Zarubin told her he didn't have to give

a reason why she didn't get the apartment, and she said she then asked if it was because she was on mothers' allowance. "He said, 'Mothers' allowance. That's why,'" Ms Kostanowicz testified. She quoted Mr. Zarubin as also saying, "I had two other women on mothers' allowance and I had bad experiences."

She said she recounted the story to her social worker who advised her of the provisions of the Human Rights Code. Eventually she contacted the Centre for Equality Rights in Accommodation, a tenants' rights advocacy group which ended up representing her at this hearing.

Russell Armstrong, who in 1991 was a caseworker with the Centre, testified that he called Mr. Zarubin to investigate Ms Kostanowicz's complaint. He quoted Mr. Zarubin as saying that he had had difficulty with people on welfare twice in the past and that because of this he was not going to rent apartments any more to people on mothers' allowance. Mr. Armstrong said he asked Mr. Zarubin whether he was aware of human rights laws and said Mr. Zarubin said he could do whatever he wanted. Mr. Armstrong says Mr. Zarubin then told him he was "full of shit" and hung up the phone.

This version of events is at odds with that of Mr. Zarubin and his witnesses.

Mr. Plamenco testified that a prospective tenant fills out an

application only after being shown an apartment. He said he determines which particular unit is being applied for by the date the prospective tenant gives as the occupancy date. The prospective tenant must give him a starting date for the tenancy, he said, since the units have differing anniversary dates for the purpose of provincial rent review, and thus units that are otherwise the same will have different monthly rental charges. This means that an application cannot be sent on to Mr. Zarubin for approval until the tenant is able to give a precise date for the start of the tenancy.

Ms Kostanowicz was shown an apartment, according to Mr. Plamenco, in the normal way -- by the superintendent or one of her family -- and did not fill out an application until afterwards. (The superintendent's husband, Mbarak Bazid, appeared briefly at the hearing and testified that he could not remember Ms Kostanowicz or whether she was shown an apartment.)

But Mr. Plamenco said Ms Kostanowicz's application was never processed because she could not give him a start date for the tenancy. He recounts Ms Kostanowicz saying she had to call back with this information because she had to give notice to her current landlord. When Ms Kostanowicz called back a couple of days later with her landlord's phone number, Mr. Plamenco said he asked her about the start date and that she replied she was still working on it. Because of this, the application was kept in the "pending" file

and never turned over to the Zarubins for approval, he said.

Mr. Plamenco disputes Ms Kostanowicz's evidence that she called in with the landlord's phone number and asked during this phone call whether anything else was needed and was told no. He is emphatic that Ms Kostanowicz was shown an apartment.

While this was happening, Mr. Zarubin -- who clearly is the primary decision-maker on matters relating to the apartments -- was away in Florida. He testified that when he returned he visited Mr. Plamenco at the rental office in the complex on April 20 and saw Ms Kostanowicz's application. "I looked at this application and I said to Paul, 'This is absolutely correct that we didn't consider it,' because it was not clear when she needed it," Mr. Zarubin testified. Later in his testimony, Mr. Zarubin said he first saw the application when he was made aware of the human rights complaint. The complaint is dated May 15.

Mr. Zarubin denied that he had ever talked to Ms Kostanowicz and said he could not recall ever talking to Mr. Armstrong. If he did speak to Mr. Armstrong, it would not be in the crude manner that Mr. Armstrong described, he added. But Mr. Zarubin's son, Dean Zarubin, did remember a conversation between his father and Mr. Armstrong. He said he heard the conversation on the speaker phone at their home. He described a testy conversation in which his father told Mr. Armstrong that he had no right to tell him how to

run his business. Mr. Armstrong, he said, accused Mr. Zarubin of denying the apartment because Ms Kostanowicz was on public assistance and Mr. Zarubin responded, he said, by telling Mr. Armstrong he was "full of shit."

Dean Zarubin said this conversation occurred in the summer of 1992, while Mr. Armstrong told the hearing that his conversation with Mr. Zarubin happened in the spring of 1991.

In his evidence, Branislaw Zarubin outlined the rental procedures in much the same way as did Mr. Plamenco. He said that where a prospective tenant does not know a start date, his policy is to show the person a sample apartment and then, once the person has given a start date, he and Mr. Plamenco will determine if a unit is available then.

Mr. Zarubin said that once an application is completed, references are checked carefully. While the applications require prospective tenants to disclose their income, Mr. Zarubin said he never looks at how much money people are making. There are many people with a good income who have trouble making rental payments, he said; more important is a person's character and sincerity and whether the prospective tenants are likely to disturb others, for example with loud parties..

He said he has had many tenants on public assistance but could